IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/03/2004

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1061 OF 1993

1. K. Chennimalai Gounder
2. K. Marappa Gounder
3. K. Natarajan .. Plaintiffs

-Vs-

1. C. Iyyasamy
2. C. Subramaniam
3. K. Venkatachalam
4. K. Senniappan
5. Karuppasamy Gounder

6. Tamilnadu Electricity Board
rep. by Superintending Engineer,
Pykara Electricity System,
Tatabad, Coimbatore

7. Tamilnadu Electricity Board
rep. by Assistant Divisional
Engineer, Mangalam Road,
Avanashi, Avanashi Taluk,
Coimbatore District .. Respondents

This second appeal is preferred under Section 100 of CPC against the judgment and decree in AS No.36/91 on the file of the learned Subordinate Judge, Tiruppur dated 24.12.1992 reversing the judgment and decree in OS No.544/89 on the file of the learned District Munsif, Tiruppur dated 10.10.1991.

!For Appellants : Mr.A.Sivaji

^For Respondents : Mr.K. Raghunathan for RR1 to 4
Mr.S.Rajeswaran for EB for RR6&7
No appearance for R5

:JUDGMENT

This second appeal has arisen from the judgment of the learned

Subordinate Judge, Tiruppur made in AS No.36 of 1991, wherein the judgment of the trial court in OS No.544 of 1989 seeking the relief of declaration that the plaintiffs are entitled to use the service connection 291 of Karumapalayam Village for the purpose of lifting water from common electric motor pump set installed in common well in S.F.89/1, in their turn of one day out of 3 days and for the consequential permanent injunction and mandatory injunction was reversed.

2. The following facts are noticed in the pleadings of the parties:
The plaintiffs are the sons of Kandappa Gounder. The defendants 1 and 2 are brothers and the defendants 3 and 4 are brothers and the defendants 3 and 4 are the first cousins of the defendants 1 and 2. The fifth defendant is the father of the defendants 3 and 4. There is a common well situated in SF No.89/1, wherein the plaintiffs are entitled to 1/3rd and the defendants 1 to 5 are entitled to remaining 2/3rd share. In the common well, there is a common electric motor pump set installed in the said well. The electric motor pump set is 7.5 HP, wherein the plaintiffs are entitled to 1/3rd share and the defendants 1 to 5 are entitled to remaining 2/3rd share. The parties have got electric energy for service connection No.59 in the name of Karuppasamy Gounder. The ancestors of the plaintiffs and the defendants 1 to 4 were enjoying the property happily by lifting water in their turn from SF.No.89/1. Due to the non payment of charges, there was a disconnection of service connection No.59. The defendants 1 to 4 as plaintiffs filed a suit in OS No.728 of 1988 seeking for reconnection of service connection No.59. The defendants 1 to 4 filed an interlocutory application in IA No.2302 of 1988 for injunction directing the defendants 1 and 2 in the suit and the defendants 6 and 7 herein to restore the old service connection No.59 after receiving the charges and got an order. The defendants 6 and 7 in collusion with the defendants 1 to 4 instead of supplying or reconnecting the energy to the existing (then existed) service connection No.59, purposely got separate agreement without the consent of the plaintiffs and granted separate service connection No.291. The defendants 6 and 7 have no authority to get fresh agreement from one of the sharers in the Well. The Electricity Department, namely the defendants 6 and 7 should have asked the defendants 1 to 4 to secure no objection certificates from the co-owner of coshares in the well, namely, the plaintiffs herein. The plaintiffs have filed an application in IA No.570/89 in IA No.2302/88 praying for modification of injunction granted. By substitution of new service connection No.291 instead of old service connection No.59, will not take away the right of the plaintiffs to use the new service connection, and hence, there arose a necessity for filing the suit.

3. The third defendant contested the suit stating that the electricity service connection No.59 in the well was effected on 31.1.1957 for 5 HP; that later, on 1.1.1977, the HP was increased to 10 HP; that the plaintiffs never interested in agriculture; that they have never co-operated with the defendants in paying the electric charges or in repairing the motor pump set; that the plaintiffs also refused to cooperate with the defendants in paying the arrears and getting back the service connection; that the defendants' only income is from agriculture; that the Electricity Board has announced a scheme, under which the consumer of a dismantled service could

apply before 24.12.1988 for a new service connection; that the defendants had applied for the same; that the defendants have paid a huge sum in clearing the arrears in service connection No.59; that service connection No.291 is totally a new service connection granted to the defendants 1 to 4 alone and the plaintiffs have no right over the same, and hence, the suit was to be dismissed. The defendants 1,2,4 and 5 have adopted the written statement of the third defendant.

4. The seventh defendant has also resisted the suit by filing a written statement stating that service connection No.59 was for 10 HP; that the service connection was disconnected in March, 1984 and subsequently dismantled; that all the materials pertaining to the said service connection were removed; that the electricity Board had announced a scheme, under which the consumer can make an application for fresh service connection before 24.12.1988; that it is not correct to say that there is a restoration of dismantled service connection; that the plaintiffs did not apply for new service connection; that as per the application of the defendants 1 to 4, the Electricity Board gave a new service connection bearing No.291 for 7.5 HP in the name of the defendants 1 to 4 herein, and hence, the suit was to be dismissed.

5. The trial court framed necessary issues, tried the suit and decreed the same. Aggrieved, the defendants took it on appeal. The learned Subordinate Judge, Tiruppur, on enquiry of the appeal, reversed the judgment of the trial court and dismissed the suit. Hence, this second appeal has been brought forth by the plaintiffs in the suit.

6. At the time of admission, the following substantial questions of law were formulated by this court for consideration: 1) Whether the lower appellate Court is right in holding that the service connection in question is only a new connection and not reconnection inspite of the fact that the service connection was ordered to be given by the learned District Munsif in I.A.No.2302/88 in O.S.728 /99 as a reconnection and not as a new connection? 2) Whether the lower appellate Court is justified in dismissing the suit when the claimant of the contesting defendants is clearly barred by the principles of res-judicata and estoppel?

7. Heard the learned counsel for the appellants and the learned counsel for the respondents on those contentions.

8. This court paid its full attention on the rival submissions and made a thorough scrutiny of the materials available and is of the opinion that the appeal carries no merit. As could be seen from the plaint, it was a suit seeking for declaratory relief. Admittedly, the plaintiffs and the defendants 1 to 5 were entitled to Nanja lands situated in Survey No.89/1 and the service connection No.59. The plaintiffs' father Kandappa Gounder owned 1/3rd share, while Chinna Chennimalai Gounder, the father of the defendants 1 and 2 was entitled 1/3rd and Karuppasamy, the father of the defendants 3 and 4 was entitled to 1/3rd share in the lands and the well therein situated in Survey No.8 9/1. After the life time of Kandappa Gounder, his 1/3rd share came to the hands of the plaintiffs. The 1/3rd share of Chinna Chennimalai Gounder

came to the hands of the defendants 1 and 2. The fifth defendant has given his share to his sons, namely, the defendants 3 and 4. According to their share, the parties were taking water from the common well through the said Service Connection in turn. It is also not in controversy that due to the default in payment of the charges for the consumption of electric energy, the said service connection was severed in the year 1984. On 3.1.1985, all the instruments pertaining to service connection were also removed. It was contended by the defendants 1 to 4 before the courts below that the plaintiffs did not make payment of their share in the charges, since they were not interested in the agricultural operations and they were employed otherwise. Admittedly, a suit was filed by the defendants 1 to 4 in OS No.728 of 1 988 seeking for reconnection of service connection No.59. Pending suit, an interlocutory application in IA No.2302 of 1988 was filed, wherein the defendants herein undertook to pay the arrears of electric charges, and hence, under the stated circumstances, the Court in that suit has passed an order for reconnection in the said service connection.

9. Now, the case that was projected by the plaintiffs before the courts below was that subsequent to the order in that suit, the defendants applied for a new service connection and a new service connection No.291 was given to them. Since the defendants already undertook to have the reconnection in service connection No.59 and they had also got the connection accordingly, the plaintiffs were also entitled to the share, which originally they held in service connection No.59.

10. The defence plea before the court below was that the new service connection, which was applied for and obtained by the defendants 1 to 4, was nothing to do with the earlier connection and the plaintiffs could not lay any claim over the new one, and hence, the suit was to be dismissed. The first appellate court, only on consideration of the merit of the defence, has rejected the plaintiffs' case. It is not in controversy that the original service connection bore No.59. Due to the non payment of the electric charges, the connection was severed in the year 1984. The contention of the defendants that there was a default on the part of the plaintiffs in making payment of electric service charges is not denied anywhere by the plaintiffs. It is also not in dispute that on 3.1.1985, all the materials pertaining to the said service connection were removed by the El ectricity Board. The motor pump set was entrusted to Palaniandavar Industries by the defendants for the purpose of repairs and it could not be taken back in view of the non co-operation of the plaintiffs. It is an admitted position that the earlier service connection No.59 was for 10 H.P., and, at present, there was an application made by the defendants 1 to 4 for a new service connection and a new service connection No.291 was given and it is for 7.5 HP. Apart from all the above, the plaintiffs were entitled to their 1/3rd share in the old service connection No.59. It is not in controversy that due to the default in making payment of electric consumption charges, the same was disconnected and all the instruments have also been taken away by the Electricity Board. Now, at this juncture, for sheer necessity, the defendants 1 to 4 had made an application and have obtained a new service connection. The above would clearly indicate the non co-operation on the part of the plaintiffs. Now, the plaintiffs wanted to take advantage of the earlier order passed in the

interlocutory application filed by the defendants in the earlier suit. Under the stated circumstances, the contention of the plaintiffs that it was only the restoration of old service connection by payment of charge and not a new one cannot be accepted for all the reasons stated above.

11. The plaintiffs can have their 1/3rd share only in the earlier service connection No.59. But, the defendants had got an independent and separate service connection No.291. It is quite evident from the application made by the defendants 1 to 4 and they have got a new service connection No.291, in which the plaintiffs cannot be permitted to lay a claim stating that it was the restoration of the old service connection. Under the stated circumstances, it is brought to the notice of the court by the learned counsel for the respondents that the plaintiffs have also made an application to the Electricity Board and got an independent service connection in their name and the same is not also disputed by the appellants herein. Hence, the judgment of the first appellate court has got to be sustained both in law and fact. Hence, this Court is unable to notice any reason to interfere in the judgment of the first appellate court.

12. This second appeal fails and the same is dismissed, leaving the parties to bear their costs.

13. It is brought to the notice of the court by the learned counsel for the appellants that at the time of granting interim order, directions were given to deposit a sum of Rs.10000/- as condition and accordingly, it has been done. The learned counsel for the appellants would make a request that an order has got to be passed for refund of the same to the appellants. The learned counsel for the respondents has no objection for the same. Accordingly, it is ordered.

Index : Yes
Internet : Yes
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To
1. The Subordinate Judge, Tiruppur
2. The District Munsif, Tiruppur
3. The Record Keeper, VR Section, High Court, Madras

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